



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

July 26, 2004

Ms. Michele Austin
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR2004-6214

Dear Ms. Austin:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 205739.

The City of Houston (the "city") received a request for copies of all files, records and any other documents in the possession of the Houston Police Department and Homicide Department regarding a named individual. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code.¹ We have considered the exception you claim and reviewed the submitted information.

Initially, we address the city's obligations under section 552.301 of the Government Code. Subsections 552.301(a) and (b) provide:

(a) A governmental body that receives a written request for information that it wishes to withhold from public disclosure and that it considers to be within one of the [act's] exceptions . . . must ask for a decision from the attorney general about whether the information is within that exception if there has not been a previous determination about whether the information falls within one of the exceptions.

¹ We note that the documentation submitted as Exhibits 2 and 3 is not responsive to the instant request. Therefore, this decision does not address the disclosure of Exhibits 2 and 3.

(b) The governmental body must ask for the attorney general's decision and state the exceptions that apply within a reasonable time but not later than the 10th business day after the date of receiving the written request.

Furthermore, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving the written request for information (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. In this instance, you acknowledge that the city failed to comply with the ten and fifteen business day deadlines. Under section 552.302 of the Government Code, a governmental body's failure to comply with the procedural requirements of the Public Information Act (the "Act") results in the legal presumption that the information is public and must be released.

In order to overcome the presumption that the requested information is public information, a governmental body must provide compelling reasons why the information should not be disclosed. *Id.*; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.--Austin 1990, no writ); *see* Open Records Decision No. 630 (1994). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Since the applicability of section 552.101 can provide a compelling reason to withhold information from disclosure, we will address your arguments.

You assert that the submitted information is excepted from disclosure in its entirety under section 552.101, which excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common-law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks for all information concerning a certain person. In this case, we believe that the individual's right to privacy has been implicated. Thus, where the individual is named as a possible suspect or arrestee, we conclude that you must withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code. *See id.* We note, however, that the common-law privacy right of an individual protected under section 552.101 and *Reporters Committee* lapses upon the death of that individual. *See Moore v. Charles B. Pierce Film Enters., Inc.*, 589 S.W.2d 489, 491 (Tex. App.-Texarkana 1979, writ ref'd n.r.e.); *see also Justice v. Belo Broadcasting Corp.*, 472 F. Supp. 145, 146-47 (N.D. Tex. 1979) (protection afforded by provision enacted to protect privacy of an individual

extinguishes upon individual's death). Thus, in the event that the individual identified in the request is deceased, information cannot be withheld under section 552.101 in conjunction with that individual's common-law right to privacy.

In the alternative, you contend that Exhibit 13 contains criminal history compilations that pertain to individuals other than the person named in the request and are considered confidential under federal and state common-law rights to privacy. We note that Exhibit 12 contains similar compilations pertaining to individuals not named in the request. Pursuant to *Reporters Committee*, we conclude that you must also withhold this information under common-law privacy as encompassed by section 552.101 of the Government Code.

You also contend that some of the submitted information is confidential under section 552.101 in conjunction with section 51.14 of the Family Code. Prior to its repeal by the Seventy-fourth Legislature, section 51.14(d) of the Family Code provided for the confidentiality of juvenile law enforcement records. *See* Open Records Decision No. 181 (1977) (concluding that former Fam. Code § 51.14(d) excepts police reports which identify juvenile suspects or furnish basis for their identification). Law enforcement records pertaining to juvenile conduct occurring before January 1, 1996 are governed by former section 51.14(d), which was continued in effect for that purpose. Act of May 27, 1995, 74th Leg., R.S., ch. 262, § 100, 1995 Tex. Gen. Laws 2517, 2591. Exhibits 4 and 7 contain reports that involve juvenile offenders and concern conduct that occurred before January 1, 1996. Since none of the exceptions to former section 51.14(d) apply in this instance, we conclude that the city must withhold Exhibits 4 and 7 from disclosure pursuant to section 552.101 in conjunction with former section 51.14(d) of the Family Code.

The remaining submitted information contains social security numbers that may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* Because this federal provision is intended to protect the privacy interests of individuals, this provision does not encompass the social security number of a deceased individual. *See* Attorney General Opinion H-917 at 3-4 (1976); Open Records Decision No. 272 at 1 (1981). However, the remaining submitted information contains other social security numbers that may be confidential under section 552.101 in conjunction with the federal law. We have no basis for concluding that any of these social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law enacted on or after October 1, 1990.

Lastly, some of the remaining submitted information is confidential under section 552.130 of the Government Code, which provides, in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

(1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]

(2) a motor vehicle title or registration issued by an agency of this state[.]

Therefore, you must also withhold the Texas driver's license numbers we have marked under section 552.130.

In summary, where the individual named in the request is listed as a possible suspect or arrestee, you must withhold this information under section 552.101 in conjunction with common-law privacy, unless the individual is deceased. In the event that the individual named in the request is no longer living, you must withhold under section 552.101 and common-law privacy the criminal history compilations in Exhibits 12 and 13 pertaining to individuals not named in the request; you must withhold Exhibits 4 and 7 pursuant to section 552.101 in conjunction with former section 51.14(d) of the Family Code; social security numbers may be excepted under section 552.101 in conjunction with federal law; you must withhold the marked driver's license numbers under section 552.130; and you must release all remaining information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

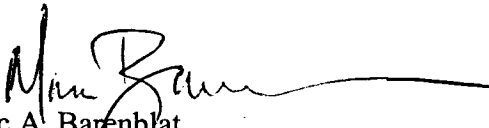
statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


Marc A. Barenblat
Assistant Attorney General
Open Records Division

MAB/jh

Ref: ID# 205739

Enc. Submitted documents

c: Mr. Christopher Richart
Mayer, Brown, Rowe & Maw, LLP
700 Louisiana Street
Suite 3600
Houston, Texas 77002-2730
(w/o enclosures)